The Rights of Women According to Roman Law

Roman Family Law

Roman Family Law was based on the principle that the father of the family (*pater familias*) had complete authority both over the children and his wife. This was defined as paternal power : (*patria potestas*).

The wife held the following position:

- The wife is the property of her husband and completely subjected to his disposition.
- He could punish her in anyway, including killing her, or selling her as a slave (the last punishment was forbidden after 100 BC).
- As far as family property is concerned the wife herself does not own anything. Everything she or her children inherit belongs to her husband, including also the dowry which she brought with her to her marriage.

In later time this absolute power of the husband was gradually diminished leading to what was known as the “free marriage”, husband and wife could agree upon.

However, even in this new situation, the husband had the right to make the final decisions in all questions concerning the family: for instance the place of residence which the wife had to share with him, the education of the children, the exclusive rights on her wifely duties, while the husband himself could make love to other women with impunity.

The rights of women in general Civil Roman Law

Although the woman was considered a Roman citizen, she obtained her position only through her husband. Neither slaves nor women could carry their own name. Only men carried this distinct sign of their being a Roman citizen.

The general law was: "*In many sections of our law the condition of women is weaker than that of men*".

Moreover, the woman was excluded from all public functions and rights: *"Women are excluded from all civil and public functions and therefore can neither be judges nor carry any civil authority, they cannot bring a court case, nor intercede for someone else nor act as mediators"*.

- The woman could not have charge of another person. "Tutela virile officium est" . She could not have patronage of her children and cousins (except in later Roman law).
- Women could not function as witnesses, whether at the drawing up of a last will, or in any other form of law. *"The woman is incapable of being a witness in any form of jurisprudence where witnesses are required"*. Women were reckoned with minors, slaves, the dumb and criminals to be incapable of being witnesses.
- Women could not start a court case without being represented by a man. Women cannot represent themselves in law *"because of the infirmity of their sex and because of their ignorance about matters pertaining to public life"*.

In spite of a slight relaxation in laws which offered more protection to women in the Roman Empire of the 3rd and 4th centuries, the overall inferior status of women remained the same.